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SUBJECT: The Seventeenth Session of the WIPO Standing Committee on Copyright and Related Rights (SCCR), November 3-7, 2008

¶1. SUMMARY: The 17th meeting of the SCCR focused on establishing a future work plan for the committee. The SCCR agreed to continue discussion on limitations and exceptions to copyright, including the question of format accessibility to copyright protected content by visually impaired persons. The SCCR also agreed to continue discussing a treaty on the protection of broadcasted signals, and the protection of audiovisual performances. END SUMMARY.

¶2. The seventeenth session of WIPO's Standing Committee on Copyrights and Related Rights (SCCR) was held November 3-7, 2008 in Geneva, Switzerland. The meeting was chaired by Jukka Liedes (Finland). Several non-governmental organizations from industry groups and civil society attended and delivered interventions at the meeting.

¶3. The United States delegation was represented by Michael Shapiro and Jacqueline Morales of the United States Patent and Trademark Office (USPTO), David Carson of the U.S. Copyright Office, and Deborah Lashley-Johnson, IP Attaché at the U.S. Mission to the UN.

LIMITATIONS AND EXCEPTIONS

¶4. In March 2008, a Joint Proposal led by Chile, and supported by Brazil, Nicaragua, and Uruguay, recommended that the SCCR focus on national experiences concerning limitations and exceptions and develop a treaty, with the objective of achieving minimum mandatory limitations and exceptions to copyright protection for each Member State to adopt in national law. The Joint Proposal also highlighted using limitations and exceptions to improve the accessibility of copyrighted content for visually impaired persons. The need for visually disabled people to have access to copyright protected works in a readable format (e.g. Braille, large print and audiobooks) may involve copying and transforming a given work into a large-text or other format. National law in many countries allow such copying and transformation without the rights-owners' permissions, in other countries, however, such acts could infringe copyright if undertaken without authorization.

¶5. At the 16th Session of the SCCR, the U.S., supported by Australia, Japan, the EC, Switzerland and Norway, advocated that the SCCR's work on limitations and exceptions should be limited at this time to exchanging information on national models and practices. In furtherance of the SCCR's analysis on national experiences, the 17th session began with informal presentations commissioned by the SCCR on limitations and exceptions. These presentations were on: Limitations and Exceptions of Copyright and Related Rights in the Digital Environment; Automated Rights Management Systems and Copyright Limitations and Exceptions; Copyright Limitations and Exceptions for the Visually Impaired; and Copyright Limitations and Exceptions for Libraries and Archives. The Member States, including the U.S., found the presentations helpful in identifying the diversity of copyright limitations and exceptions in national law. The presentations pointed out: the diversity and complexity of

national experiences on limitations and exceptions; the Berne Convention framework for copyright limitations and exceptions, which has been incorporated in subsequent IP treaties, such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Internet Treaties (Copyright and Performances and Performers), do exist; and there are many tools, including technological and improved licensing options, to address access to content issues, including those for the visually impaired. However, several delegations from Africa and Latin America indicated support for norm setting activities to address concerns raised in a nongovernmental proposal by the World Blind Union (WBU) that seeks a treaty to allow the export of copyrighted material under limitation and exceptions rules. The WBU argues that national copyright laws that specify exceptions to copyright for the visually impaired are only applicable to that country's market and that a new agreement allowing for the export of these materials are needed. While the WBU's proposal was referred to throughout the meeting by delegations and other NGOs, no delegation tabled the text directly as their own proposal, and it does not have the status as a WIPO proposal. Nonetheless, several delegations have expressed interest in further analyzing the paper in the SCCR.

¶6. Aside from the process concerns associated with the WBU paper, a substantive key concern is the possible leakage of works transmitted for nonprofit purposes to developing countries, which could end up in commercial markets. Moreover, the U.S. maintains that collaboration among the stakeholders to address access issues would be a better and immediate approach rather than a new normative approach, and at the very least would be a prerequisite before taking any further action. In the end, the SCCR agreed to the possible establishment of a stakeholders' platform that will focus on contractual and other arrangements, while the SCCR also

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acknowledged some Members' request for further discussion on the WBU paper. The U.S. was also successful in narrowing the focus to "reading-disabled" persons rather than all disabled. The chair urged acceptance of the notion, noting that opening the talks to all disabled would considerably slow down the process, and he saw potential for a "quick start" for visually impaired persons.

¶7. It was also agreed that the secretariat will prepare a draft questionnaire for governments to clarify their limitations and exceptions including for educational, library and archive purposes as well as for disabled persons, and to obtain information about digital technology related to copyright.

AUDIOVISUAL PERFORMANCES

¶8. Delegates also discussed the status of negotiations on the protection of audiovisual performances. A diplomatic conference convened in 2000 which sought to update the rights of audiovisual performers at the international level concluded with no agreement. Differences still remain on the key issue of the transfer of exclusive rights from performers to producers. The United States (supported by India) favors an approach under which one national law (preferably the law of the country of production) would govern the transfer of rights from performer to producer. Such an approach could provide international validation for the U.S. "work-made-for-hire" doctrine (under which all creative inputs to a film can be efficiently transferred to the producer). By contrast, the EC countries firmly oppose the U.S. approach to the transfer of rights and, therefore, have taken the position that the rights transfer provision should be excluded from the proposed WIPO AV treaty. Moreover, incorporation of such a provision in the treaty, combined with the national treatment principle, could undermine arguments used by EC countries to refuse to repatriate royalties to U.S. performers and producers collected under European audiovisual levies.

¶9. Member states attending last week's SCCR expressed their commitment to develop the international protection of performers in their audiovisual performances. Many delegations underlined the importance of information exchange as a means of building consensus on this issue. The SCCR supported the continued organization of

regional and national seminars as a means of facilitating information exchange and promoting national systems of protection in this area.

BROADCASTING ORGANIZATIONS

¶10. The SCCR decided to continue discussions on the protection of broadcasting organizations with a view to concluding an international instrument, despite failure to agree on a draft treaty text in 2007. In particular, the EC countries, Japan, and Mexico favored an approach that would grant broadcasters a broad range of new exclusive rights, while the final U.S. position called for a narrower treaty focused exclusively on preventing signal piracy (an approach generally shared by Brazil, Egypt, and India, although the positions of those countries and the U.S. diverge in several important respects relating to other issues). There were also wide differences among the delegations on the kinds of broadcasts and broadcasting organizations that should be protected under the treaty.

¶11. The United States favored a modern regime that would go beyond protection for traditional broadcasting, cablecasting and satellitecasting entities to include "netcasters" (entities that conduct broadcast-like activities over a computer network such as webcasters). However, the U.S. proposal failed to attract support. The committee had previously agreed to set aside talks on protection for webcasters while it tried to move to a diplomatic conference on a treaty to protect against piracy of signals of broadcasters and cablecasters. The understanding was that the committee would return to webcasting and simulcasting later. After extensive deliberations at two special sessions of the SCCR in 2007, that consensus proved illusive. In particular, from the viewpoint of the U.S., failure of the SCCR to reach such a consensus dissolved the "two-track" approach, leaving only the single track of continuing discussions. The United States observed that although it had agreed, in 2006, to take the webcasting issue off the table temporarily in the hope that it would assist in reaching sufficient consensus to proceed to a diplomatic conference in 2007, the failure to reach such consensus meant that the agreement to defer discussion of webcasting has expired.

¶12. Member States restated their established positions during the meeting, agreeing only that further work is required to achieve

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agreement on the objectives, specific scope and object of protection of such an instrument, before convening a diplomatic conference to conclude a treaty. All delegations said that this process should proceed according to the WIPO General Assembly's decision in 2007, which had stated that the approach to protection must be signal-based, and that a diplomatic conference could be convened only after agreement on objectives, specific scope and objective of protection had been achieved. The SCCR agreed to continue its analysis of the matter and requested that an information meeting be organized during the SCCR's next session in May 2009. This information session would focus on the current conditions within the broadcasting environment.

¶13. The next meeting of the SCCR will be held from May 25-29, 2009.

¶14. Further information--All of the documents prepared for the 17th Session of the SCCR are available on the website of WIPO at www.wipo.int.

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